

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

The examiner has objected to the drawings as not disclosing the features of claim 11. Claim 11 has been canceled without prejudice.

The Examiner has rejected claims 13 and 14 under 35 U.S.C. first paragraph. Claims 13 and 14 have been canceled without prejudice.

The Examiner has rejected claims 1-3, 5, 8, 9, 10, 14-18, 23-25 under 35 U.S.C. 103(a) as being unpatentable over Yeh.

Claim 1 has been amended to include the elements of claim 20. Therefore, it is respectfully submitted that claim 1 is patentable over the above cited rejection. In addition, it is respectfully submitted that the dependent claims 2, 3, 5, 8, 9, 10, 14-18 and 23-25 are patentable over the above identified rejection as well.

NEUMANN, C. -1
10/801119

The Examiner has rejected claims 1-6, 9, 10, and 15 under 35 U.S.C. 103(a) as being anticipated by *Daher*.

As stated above, claim 1 has been amended to include elements of claim 20. Therefore, it is respectfully submitted that claim 1, and dependent claims 2-6, 9, 10, and 15 are allowable over the above cited reference.

The Examiner has rejected claims 1, 2, 3, 5, 8-10 14-18, 23, 24, and 25-28 as being unpatentable over *Paponneau* in view of *Yeh*.

Claim 1 has been amended to include elements of claim 20. Therefore, it is respectfully submitted that claim 1 and dependent claims 2, 3, 5, 8-10, 14-18, 23, and 25-27 which depend from claim 1 are patentable over the above cited reference.

With regard to independent claim 28, this claim states that the joining plate is configured in a "star shaped manner".

It is respectfully submitted that this feature is not shown in either *Paponneau* or *Yeh*. Therefore, it is respectfully submitted that claim 28 is patentable over the combination of the

NEUMANN, C. -1
10/801119

above identified references taken either singly or in combination.

The Examiner has rejected claims 19-22 and 29 as being unpatentable over *Paponneau* in view of *Yeh* and in further view of *Strnad*.

Claim 20 has been canceled without prejudice, with elements of claim 20 being incorporated into claim 1. It is respectfully submitted that claim 1 and therefore, dependent claims 19, 21-22 are patentable over the above cited combination. For example, it is respectfully submitted that both claims 1 and 29 both state that the joining plate is shaped in a "star shaped manner"

The Examiner states that the joining plate having a star shape would have been obvious matter of design choice to one skilled in the art at the time the invention was made. The Examiner also has stated on page 13 of the rejection that the Applicant has not disclosed any stated problem or anything more than a numerous shapes or configurations that any person skilled in the art would find obvious for providing a surface and adjoining plate in the shape of adjoining plate. The Applicant respectfully traverses this statement and this rejection. On page 7 of the amended Specification, second paragraph, it states,

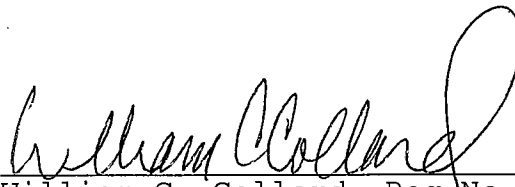
The implant, structured as a modular system, can be made variable in shape wherein the joining plate is configured as a polygon, in a rounded manner, or, alternatively, in a star-shaped manner. The star-shaped configuration of the joining plate, in particular, is set so that a closed surface is not formed as a sharp separating plane between the vertebrae and the implant arranged below the joining plate. This creates the possibility that an osseous connection will form between the two vertebrae wherein an implant can grow into place particularly well, particularly if bone chips, bone cement, or the like is used in supportive manner.

As stated above, the particular shape, in particular, the star-shaped configuration in the joining plate, is formed such that creates a possibility that an osseous connection will form between the two vertebrae wherein an implant can grow into place particularly well, particularly if bone chips, bone cement, or similar elements are used in this supportive manner. It is clear from this explanation that the shape of the joining plate is particularly important in this matter, particularly in the form of a star shaped manner. Therefore, it is respectfully submitted that the Applicant has presented sufficient reason for the particular star-shaped configuration. Since the combination of *Poppnneau, Strnad* and *Yeh* does not disclose this type of configuration, it is respectfully submitted that this feature is patentable over the publication to *Poponneau, Yeh, and Strnad*.

NEUMANN, C. -1
10/801119

In conclusion, it is respectfully submitted that independent claims 1, 28 and 29 as written are patentable over the above cited references taken either singly or in combination. In addition, it is respectfully submitted that dependent claims 2, 3, 5-6, 8-10, 12-15, 17-19, and 21-27 are patentable over the above cited references. No new matter has been added. Accordingly, early allowance of the remaining claims is respectfully requested.

Respectfully submitted,



COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802

William C. Collard, Reg.No.38,411
Attorney for Applicant